

IN THE UNITED STATES DISTRICT COURT **FILED**  
FOR THE DISTRICT OF NEW MEXICO *JM*

UNITED STATES DISTRICT COURT

U.S. DISTRICT COURT  
NEW MEXICO

01 DEC -4 PM 1:54

**MIKE SANTILLANES, a/k/a**  
**MIGUEL DE LA GARZA**

Plaintiff,

v.

**NO. CIV 01-0091 JP/RLP-ACE**

*John B. French*  
CLERK OF COURT

**JOHN ALLEN,**  
**In his individual capacity,**

**OTIS RODRIGUEZ,**  
**In his individual capacity,**

**JOHN DOE 1,**  
**In his individual capacity, and**

**JOHN DOE 2,**  
**In his individual capacity,**

Defendants.

**OTIS RODRIGUEZ' MOTION TO DISMISS No. III:  
DISMISSAL OF ALL OF SANTILLANES' SECTION 1983 CLAIMS  
AGAINST OFFICER RODRIGUEZ BASED ON THE TESTIMONY  
GIVEN BY HIM DURING A STATE COURT SUPPRESSION HEARING**

Defendant, New Mexico State Police Officer Otis Rodriguez, (*hereinafter* referred to as "Officer Rodriguez"), through his attorneys French & Associates, P.C. (Luis Robles, Esq.) and pursuant to Fed.R.Civ.P. 12(b)(6) and D.N.M.LR-Civ. 7.3(a), respectfully requests that this Court grant his Motion to Dismiss No. III: Dismissal of All of Santillanes' Section 1983 Claims Against Officer Rodriguez Based on the Testimony Given by Him During a State Court Suppression Hearing.

*44*

Pursuant to D.N.M.LR-Civ 7, a Memorandum in Support of this Motion is filed concurrently with this Motion.

Pursuant to D.N.M.LR-Civ. 7.2(a), Officer Rodriguez' counsel attempted in good faith to settle this Motion to Dismiss before it was filed. On November 19, 2001, Officer Rodriguez' counsel sent a letter to Plaintiff's attorney. *A copy of the letter, dated November 19, 2001, is attached as Exhibit A.* The letter requested that Plaintiff agree to the voluntary dismissal of his federal and state claims stemming from the testimony given at the state court suppression hearing based on the doctrine of absolute witness immunity. In a letter dated November 20, 2001, Plaintiff's counsel requested additional information upon which to base his decision. On November 28, 2001, Officer Rodriguez' counsel sent a draft of Memorandum in Support of this Motion. Officer Rodriguez' counsel's letter once again requested that Plaintiff agree to the voluntary dismissal of his federal and state claims by December 3, 2001. Plaintiff's counsel did not respond to Officer Rodriguez' second request.

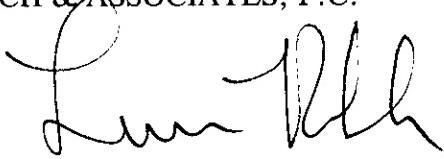
**WHEREFORE**, Defendant, Otis Rodriguez, respectfully requests that this Court grant his Motion to Dismiss No. III, dismiss all of Santillanes' Section 1983 claims against Officer Rodriguez based on the testimony given by him during a state court suppression hearing with prejudice, award Officer Rodriguez his attorney's fees and costs, and for all other relief this Court

deems just and proper.

Respectfully submitted,

FRENCH & ASSOCIATES, P.C.

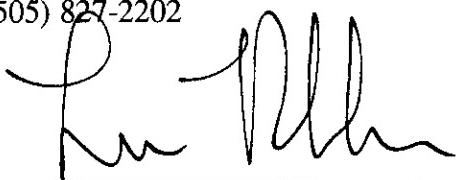
By:

  
\_\_\_\_\_  
Luis Robles  
Attorneys for Defendant Otis Rodriguez  
500 Marquette Ave. N.W., Suite 600  
Albuquerque, New Mexico 87102  
(505) 843-7075

I hereby certify that a true and correct copy of the foregoing was sent via U.S. Mail this 3<sup>rd</sup> day of December, 2001 to:

Joe Romero, Jr., Esq.  
Attorney for Plaintiff Mike Santillanes  
1905 Lomas Blvd., N.W.  
Albuquerque, New Mexico 87104  
(505) 843-9776

John E. DuBois, Esq.  
RMD LEGAL BUREAU  
Attorney for Defendant John Allen  
P.O. Drawer 26110  
Santa Fe, New Mexico 87502-0110  
(505) 827-2202

  
\_\_\_\_\_  
Luis Robles

# FRENCH & ASSOCIATES, P.C.

Christina E. Anaya  
Robert W. Becker  
Stephen G. French  
Lisa T. Mack  
Luis Robles  
Katherine E. Tourek

500 Marquette Ave. N.W., Suite 600  
Albuquerque, New Mexico 87102  
Tele: (505) 843-7075  
Fax: (505) 243-3482

November 19, 2001

Joe Romero, Jr., Esq.  
Romero & Associates, P.C.  
1905 Lomas, Blvd., N.W.  
Albuquerque, New Mexico 87104

COP

RE: Santillanes Mike v. Allen, John, et al.,  
CIV 01-0091 JP/RLP-ACE

Dear Mr. Romero:

As required by D.N.M.LR-Civ. 7.2(a), the purpose of this letter is to determine whether you concur with or oppose a Motion to Dismiss No. III.

More specifically, Officer Rodriguez is considering the filing of the following Motion: Motion to Dismiss No. III: Dismissal of All of Plaintiff's Federal and State Claims Stemming from the Testimony Given at the State Court Suppression Hearing Based on the Doctrine of Absolute Witness Immunity.

Please let me know if you will concur with or oppose Officer Rodriguez' proposed Motion to Dismiss No. III on or before *Monday, November 26, 2001*. Otherwise, Officer Rodriguez will be forced to file an opposed Motion to Dismiss No. III. Certainly, Officer Rodriguez does not wish to incur the cost of drafting a Motion and Memorandum in Support if it is not opposed. To avoid this unnecessary cost, I trust that you will timely respond to my request.

If you have any questions or concerns, please call me. Thank you in advance for your attention to this matter.

Sincerely,

Luis Robles

LR/gms

cc: John E. DuBois, Esq.  
Mr. Glen Bartlett, RMD Claims Bureau (CLNM-9901791-000)  
John W. Wheeler, Esq.

EXHIBIT

tabbies®

A